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Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[06 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Human Rights Situation in Colombia

Amnesty International reiterates its support for the work of the High Commissioner's Office in Colombia and welcomes the renewal of the Office's mandate until 31 October 2016.[1] Its monitoring role has been particularly important in exposing the abuses that have been the hallmark of the long-running armed conflict, and the Office will be instrumental in ensuring that respect for human rights, including the right of victims to truth, justice, reparation and guarantees of non-recurrence, are placed at the heart of the peace process.

This statement presents an overview of Amnesty International's concerns in Colombia, with a focus on 2014, and recommendations to the HRC.

The peace process

The peace talks between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC) continue to make progress. The two sides have reached partial agreements on three of the six agenda items, and issued a 10-point declaration on the fourth agenda item on victims' rights. The willingness of the two sides to begin talks on a bilateral ceasefire, following the FARC's decision to implement a unilateral ceasefire in December 2014, and the possibility of formal talks between the government and the National Liberation Army (ELN), also bode well for efforts to put a definitive end to hostilities.

In the 10-point declaration on victims' rights, the government and the FARC acknowledged their responsibility in human rights violations and abuses and that victims' rights lie at the heart of the peace negotiations and are non-negotiable. These commitments are long overdue. However, the two sides have failed to make an explicit commitment to guarantee justice for all victims of the conflict in line with international human rights law. This, coupled with government efforts to promote legislation that would make it more difficult to prosecute alleged perpetrators in ordinary civilian courts, could undermine the long-term viability of an eventual peace agreement.

Human rights defenders and communities and groups at risk

In spite of the peace process, the security forces and paramilitaries, either acting alone or in collusion with each other, as well as the FARC and ELN, continue to commit human rights violations and abuses and violations of international humanitarian law (IHL), especially against Indigenous, Afro-descendent and peasant farmer communities, women and girls, human rights defenders, community leaders, trade unionists and land claimants.

At least 40 human rights defenders were killed in the first nine months of 2014,[2] and 20 trade union members were killed in 2014 as a whole.[3] There was also an increase in mass death threats against human rights defenders, peace and land activists, politicians and journalists towards the end of the year.

Concerns over the safety of victims and human rights defenders has also been heightened after some 160 paramilitaries became eligible for release from prison after having served the maximum eight years stipulated in Law 975 of 2005, through which thousands of paramilitaries supposedly laid down their arms in a deeply flawed government-backed demobilization process. Many of them, including high-ranking leaders on remand, are expected to return to their original areas of operation where many of their victims still live.

The State's National Protection Unit (UNP) offers physical protection measures to thousands of individuals at risk, including human rights defenders. But it continues to suffer from weaknesses, including delays in implementing protection measures. Last year, the UNP was mired in a corruption scandal, and acknowledged that it would withdraw protection measures from some individuals because of a budget shortfall. Amnesty International insists that to effectively protect those at risk, the authorities must ensure that those suspected of criminal responsibility for human

[1] UN Index: A/HRC/28/3/Add.3, not published yet at the time of writing.
[2] http://www.hchr.org.co/publico/comunicados/2014/comunicados2014.php3?cod=19&cat=94
[3] Escuela Nacional Sindical, Sistema de Información en Derechos Humanos, SINDERH.

rights abuses and violations are brought to justice. However, criminal investigations in this regard have made little progress.

Impunity

Impunity continues to be a defining feature of the conflict. Government support for measures to shield alleged perpetrators, such as the Legal Framework for Peace, throws into doubt its commitment to victims' right to truth and justice. In October 2014, the government presented two bills to Congress, both still under discussion. The first seeks to expand the crimes that could be considered acts of service under the remit of the military justice system. The second could have the effect that human rights violations committed by the security forces would not be investigated as criminal actions, but rather in a manner to determine whether or not they constitute serious violations of IHL. This could result in those responsible being able to escape criminal prosecution by presenting their crime as a proportionate action in the course of an armed conflict.

In addition to these two bills, Congress is currently also debating Senate Bill No. 85, which lists several crimes to be dealt with exclusively by the military justice system, including homicide and other serious violations of IHL, and other offences to be excluded from military jurisdiction, including crimes against humanity, extrajudicial executions and sexual violence. However, since these crimes are not typified as such in the criminal code it would be left up to military prosecutors to define the nature of a crime. This could result in some human rights violations not being defined as such and thus remaining within the remit of the military justice system. In September 2014, 12 UN human rights experts warned that Senate Bill No. 85 would be a step backwards for human rights.[4]

The jurisdiction of military courts over criminal cases should be limited to trials of military personnel for breaches of military discipline to the exclusion of any crimes under international law (genocide, crimes against humanity, war crimes, torture, enforced disappearance, extrajudicial executions) and human rights violations.[5]

Land restitution[6]

The failure to ensure the fair distribution of land lies at the heart of the conflict. Official estimates suggest that some 8 million hectares of land have been abandoned or dispossessed during the conflict.[7] This has mostly affected land occupied by peasant farmers and territories collectively owned by Indigenous and Afro-descendent communities. The Victims and Land Restitution Law, which came into force in 2012, is an important first step towards ensuring that the right of some of the victims of the conflict to full reparation, including land restitution, can at last be realized.

However, the Law remains seriously flawed, with many victims excluded from its provisions, and its implementation beset by difficulties. Many national and regional state institutions lack the capacity and resources, and often the political will, to effectively implement the Law. The land restitution process has been further undermined by opposition from some local and regional political and economic elites. The government is also promoting legislation that, coupled with other existing laws, could make it easier for individuals and companies living or operating on land illegally acquired through human rights abuses and violations to legalize the occupation of large tracts of lands.

In 2010, the government claimed it would return two million hectares of land to their rightful occupants by 2014. However, only some 80,000 hectares has been adjudicated by land restitution judges and magistrates thus far. Even in those few cases where land has been adjudicated to the rightful occupants, many of those wishing to return to their land have been unable to do so because of the poor implementation of measures to ensure they can sustain themselves economically and in safety. Land claimants and those representing them, including human rights defenders and state officials, continue to be threatened and, in some cases, killed, mostly by paramilitary groups.

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[4] http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=15116&LangID=S.

[5] See Amnesty International, Fair Trials Manual, para 29(4) (Index: POL30/002/2014).

[6] See Amnesty International, Colombia: A Land Title is not Enough – ensuring sustainable land restitution in Colombia, November 2014 (Index: AMR 23/031/2014).

[7] National Centre of Historic Memory, ¡Basta Ya! Memorias de Guerra y Dignidad, 2013.

Role of the international community

The international community has a critical role to play in ensuring that the right of victims to truth, justice and reparation and guarantees of non-recurrence, including sustainable land restitution, can be realized in line with international human rights standards. It must insist that these rights are essential to ensure that Colombia can enjoy a lasting and effective peace.

Amnesty International therefore urges HRC members and observers to:

- Raise these concerns and recommendations in the HRC debate and in bilateral dialogues with the Colombian government.
- Insist that the parties to the conflict implement fully and without delay the High Commissioner's recommendations and those of other UN bodies, which offer a blueprint for ending human rights abuses and violations.
- Call on all parties to put an immediate end to human rights abuses and violations, and desist from any measures or actions that put civilians at risk.
- Urge the government to take decisive action to guarantee the safety and comprehensive protection of communities and groups at risk.
- Call on the government to take effective steps to dismantle paramilitary groups and break up any links these groups have with state agents, and sanction in ordinary civilian courts those responsible for colluding with such groups.
- Urge the Colombian authorities to effectively and independently identify, investigate, and prosecute in ordinary civilian courts all those suspected of criminal responsibility for human rights abuses and violations and serious violations of IHL.
- Urge the Colombian authorities to withdraw support for or repeal legislation, such as the reform of the military justice system and the Legal Framework for Peace, which will shield human rights abusers from justice.
- Urge the government and guerrilla groups to acknowledge that respect for human rights and an end to impunity must be a central component of the peace talks.
- Call on the Colombian authorities to urgently address the serious deficiencies in the Victims and Land Restitution Law and in its implementation.